



KEN PAXTON
ATTORNEY GENERAL OF TEXAS

July 20, 2016

Mr. Arnold G. Polanco
City Attorney
City of Friendswood
910 South Friendswood Drive
Friendswood, Texas 77546

OR2016-16348

Dear Mr. Polanco:

You ask whether certain information is subject to required public disclosure under the Public Information Act (the "Act"), chapter 552 of the Government Code. Your request was assigned ID# 620744 (Ref. No. W005969-051116).

The Friendswood Police Department (the "department") received a request for a specified police report involving a named individual. You claim the submitted information is excepted from disclosure under section 552.101 of the Government Code. You also state release of this information may implicate the privacy interests of the named individual. Accordingly, you state, and provide documentation showing, you notified the named individual of the request for information. *See* Gov't Code § 552.304 (permitting interested third party to submit to attorney general reasons why requested information should or should not be released). As of this date, we have not received comments from the named individual. We have considered the exception you claim and reviewed the submitted information.

Section 552.101 of the Government Code excepts from disclosure "information considered to be confidential by law, either constitutional, statutory, or by judicial decision." Gov't Code § 552.101. Section 552.101 encompasses the doctrine of common-law privacy, which protects information that is (1) highly intimate or embarrassing, the publication of which would be highly objectionable to a reasonable person, and (2) not of legitimate concern to the public. *Indus. Found. v. Tex. Indus. Accident Bd.*, 540 S.W.2d 668, 685 (Tex. 1976). To demonstrate the applicability of common-law privacy, both prongs of this test must be satisfied. *Id.* at 681-82. Types of information considered intimate and embarrassing by the

Texas Supreme Court are delineated in *Industrial Foundation*. *Id.* at 683. Additionally, this office has concluded some kinds of medical information are generally highly intimate or embarrassing. *See* Open Records Decision No. 455 (1987). In considering whether a public citizen's date of birth is private, the Third Court of Appeals looked to the supreme court's rationale in *Texas Comptroller of Public Accounts v. Attorney General of Texas*, 354 S.W.3d 336 (Tex. 2010). *Paxton v. City of Dallas*, No. 03-13-00546-CV, 2015 WL 3394061, at *3 (Tex. App.—Austin May 22, 2015, pet. denied) (mem. op.). The supreme court concluded public employees' dates of birth are private under section 552.102 of the Government Code because the employees' privacy interest substantially outweighed the negligible public interest in disclosure.¹ *Tex. Comptroller*, 354 S.W.3d at 347-48. Based on *Texas Comptroller*, the court of appeals concluded the privacy rights of public employees apply equally to public citizens, and thus, public citizens' dates of birth are also protected by common-law privacy pursuant to section 552.101. *City of Dallas*, 2015 WL 3394061, at *3.

Upon review, we find some of the information you have marked meets the standard articulated by the Texas Supreme Court in *Industrial Foundation*. However, we find none of the remaining information at issue, which we have marked for release, is highly intimate or embarrassing and of no legitimate public interest. Accordingly, with the exception of the information we have marked for release, the department must withhold the information you have marked under section 552.101 of the Government Code in conjunction with common-law privacy. The department must also withhold all public citizens' dates of birth under section 552.101 of the Government Code. The department may not withhold any of the remaining information under section 552.101 of the Government Code on this basis.

We note some of the remaining information is subject to section 552.130 of the Government Code, which provides information relating to a motor vehicle operator's license, driver's license, motor vehicle title or registration, or personal identification document issued by an agency of this state or another state or country is excepted from public release.² *See* Gov't Code § 552.130(a). The department must withhold the motor vehicle record information we have marked under section 552.130 of the Government Code.

In summary, with the exception of the information we have marked for release, the department must withhold the information you have marked and all public citizens' dates of birth under section 552.101 of the Government Code in conjunction with common-law privacy. The department must withhold the motor vehicle record information we have

¹Section 552.102(a) excepts from disclosure "information in a personnel file, the disclosure of which would constitute a clearly unwarranted invasion of personal privacy." Gov't Code § 552.102(a).

²The Office of the Attorney General will raise a mandatory exception on behalf of a governmental body, but ordinarily will not raise other exceptions. *See* Open Records Decision Nos. 481 (1987), 480 (1987), 470 (1987).

marked under section 552.130 of the Government Code. The remaining information must be released.

This letter ruling is limited to the particular information at issue in this request and limited to the facts as presented to us; therefore, this ruling must not be relied upon as a previous determination regarding any other information or any other circumstances.

This ruling triggers important deadlines regarding the rights and responsibilities of the governmental body and of the requestor. For more information concerning those rights and responsibilities, please visit our website at http://www.texasattorneygeneral.gov/open/orl_ruling_info.shtml, or call the Office of the Attorney General's Open Government Hotline, toll free, at (877) 673-6839. Questions concerning the allowable charges for providing public information under the Act may be directed to the Office of the Attorney General, toll free, at (888) 672-6787.

Sincerely,

A handwritten signature in black ink, appearing to read "B. Berger", is written over the typed name.

Brian E. Berger
Assistant Attorney General
Open Records Division

BB/eb

Ref: ID# 620744

Enc. Submitted documents

c: Requestor
(w/o enclosures)